



Yisroel Schulman,  
*President & Attorney-In-Charge*

December 22, 2010

**SENT VIA EMAIL:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov) [subject line: "FRB Docket No. R-1390"]

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System,  
20th Street & Constitution Avenue, NW  
Washington, DC 20551

**Re: Withdrawal Request of the Proposed Truth in Lending Act Mortgage Regulations, FRB Docket No. R-1390**

Dear Ms. Johnson,

I write this letter on behalf of New York Legal Assistance Group (NYLAG) to request that you withdraw the Truth in Lending Act (TILA) mortgage regulations proposed in FRB docket No. R-1390. The proposed rule would eviscerate borrowers' extended right to rescind a mortgage loan, significantly reducing remedies for homeowners against lenders who violate TILA. Rescission has been the single most effective tool that homeowners have to remedy predatory and abusive mortgage refinance loans. Changing the rule governing rescission is unfair to homeowners, contrary to the intent of Congress, and makes little sense as a matter of public policy, particularly in the midst of a dire foreclosure crisis.

Founded in 1990 on the premise that low-income individuals and their families can improve their lives significantly if given access to the justice system, NYLAG works to empower individuals, protect fundamental legal rights, and promote access to justice among vulnerable New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, and others in need of free legal services. NYLAG's Foreclosure Prevention Project (FPP) provides free legal assistance, advocacy, community education workshops, and Court representation to low-income New Yorkers who are facing, or are at risk of facing, foreclosure. We represent borrowers in Mandatory Settlement Conferences and pursue the best available options for our clients, including loan modifications, when applicable. Our project staff specializes in assisting individuals burdened with subprime and non-traditional loans, and are victims of other predatory mortgage lending practices, including fraud and loan flipping. The FPP is committed to providing homeowners with the best legal options available in order to avoid foreclosure and restore housing stability.

TILA specifically provides that if the material disclosures about the costs and terms of the loan are improperly made, the borrower has the right to rescind the transaction. Rescission does not

1

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mean that the note obligation goes away - only that the security interest is voided. Once the security interest is

voided, the borrower must then tender to the lender the monetary benefit the borrower received from the loan.

Borrowers do not always have the ability to tender back the balance due under the note in one lump sum to the lender, because many borrowers are not able to obtain alternative financing. The practical effect, therefore, of the extended three-year right to rescind has been to create an incentive for the lender and homeowner - both realizing they are in an imperfect position - to settle the rescission claim through an affordable and sustainable loan modification.

The proposed regulation regarding rescission would substantially alter this balance in strong favor of the lender by conditioning voidance of the security interest on tender. If the security interest is not considered void first, then there would be no incentive for lenders to negotiate with borrowers to work out an alternative to tender, such as a loan modification. Borrowers could not exercise their statutory right to rescind unless they were able to find alternative financing, which is extremely difficult in today's climate, particularly for borrowers who are behind on their mortgage payments. The extended right to rescind would therefore be worthless for the vast majority of homeowners. Furthermore, the proposal would require borrowers to pay the entire amount demanded by the creditor up front before the security interest is cancelled, wholly undermining the very purpose of the rescission right.

The only remedy left for a borrower against a lender who violates TILA would be the statutory damages of \$2,000 or \$4,000 (depending on when the loan was originated). Clearly, this nominal damage amount is neither a big enough stick to ensure lenders comply with TILA, nor a large enough remedy for an unlawful or abusive mortgage.

The Fed's proposed rule contradicts the clear order of rescission events set out by Congress in passing the Truth in Lending Act. It could not have been the intent of Congress to leave no real remedy for homeowners when lenders violate the most fundamental federal protection provided for consumers in mortgage lending transactions. If the proposed rule is passed, it would cause great harm to homeowners and communities, and make lenders less accountable for abusive practices. For these reasons, we strongly urge the Board of Governors of the Federal Reserve to withdraw the proposed mortgage regulations in FRB Docket No. R-1390.

Thank you for this opportunity to comment.

Sincerely,

NYLAG's Foreclosure Prevention Unit